Lembaga Pemegang Amanah Yayasan Sabah & Anor v Datuk Syed Kechik bin Syed Mohamed & Anor and other appeals

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPLICATION NO S-08-327 OF 1999 AND CIVIL APPEALS NO S-02-849 OF 1999, NO S-02-820 OF 1999, NO S-02-838 OF 1999 AND NO S-02-848 OF 1999
SHAIK DAUD, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
1 JUNE 2000

Civil Procedure *— Amendment — Appellate stage — Application to appeal and to amend notices of cross-appeal against decision of court disallowing amendment of statement of claim to add new cause of action and defendant — Whether amendment was interlocutory and did not form part of trial — Delay in filing appeal against decision disallowing amendment not explained —Whether court should exercise discretion to extend time to file notice of appeal — Rules of the Court of Appeal 1994 r 12(a)*

Proceedings in the four consolidated appeals before the court stemmed from the judgments delivered in two civil suits, namely Civil Suits 351/79 and 352/79 that were tried jointly in the court below. The respondents filed three applications, namely: (i) application for leave to file a notice of appeal against the decision of the High Court disallowing the respondents' application for leave to amend their re-amended statement of claim in CS 352/79 to add a new cause of action against the first appellant ('DSK') and to join Zara Sdn Bhd ('Zara') as a third defendant. The respondents maintained that despite the format used for the application and the proceedings that ensued, the application was intended to be argued in open court and form part of the proceedings in the trial as the application was made in the course of the trial. As such the application was not interlocutory in nature. It was contended that no extension of time or leave to appeal was necessary; (ii) application to amend the respondents' two notice of cross-appeal against the same order refusing amendment dated 7 April 1999, by plea of a new cause of action against DSK and the joinder of action against Zara in the same CS 352/79. It was the respondents' contention that following the evidence of a witness ('SSA'), it had become necessary to make the proposed amendments so as to meet the ends of justice; and (iii) application to amend the respondents' two notices of cross-appeal relating to the judgment dated 6 September 1999 in respect of CS 351/79 to increase the judgment sum by further awards of other sums of money which they claimed they were entitled to based on the evidence as adduced.

Held, dismissing the applications:

(1) Taking all matters into consideration, the application to amend was very much an interlocutory matter and did not form part of the trial and was correctly dealt with by the trial judge in his chambers. If indeed the amendments sought were intended to

form part of the proceedings in the trial, there was no necessity to file any summon in chambers as the application could easily have been applied for orally in open court on the morning of 8 April 1999, when the court reconvened after the one month's recess (see p 334A–C).

(2) Since the respondents' application was very much an interlocutory matter, the respondents had, under r 12(a) of the Rules of the Court of Appeal 1994, one month from 7 April 1999, within which to appeal. However, the notice of motion was only filed eight months later. The affidavit in support of the notice of motion did not contain any explanation for the delay. The court found that this was not a proper case in which the court should exercise its discretion to extend time (see p 334E, G–H).

(3) If indeed it was the contention of the respondents that the interests of justice would be met by allowing the proposed amendments so that all issues are identified and tried, the court considered that the timing of such a noble purpose should have been done much earlier and not at this very late stage when closing submissions were about to be made. If the amendments were allowed, it would mean that there would be no finality in the proceedings particularly when the amendments asked for sought to introduce a new cause of action and to add a new party into the proceedings. Such amendments would involve reopening the trial again as the parties have to go back to the High Court for the new cause of action to be tried and the new party to be heard on its defence (see p 336C–G).

(4) With regard to the application to amend the notices of cross-appeal to increase the judgment sum, the court found that the manner in which the proposed amendments were presented fell short of the court's clear understanding of that intention. Further, evidence and not facts had been pleaded. Order 18 r 7 of the Rules requires every pleading to contain only a statement in a summary form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which those facts are to be proved. The proposed amendments as drafted not only contained evidence but also submissions and inferences. They were highly improper as they offend the rules of pleading (see pp 337H, 338B–D).

[Bahasa Malaysia summary

Prosiding-prosiding di dalam keempat–empat rayuan yang disatukan di hadapan mahkamah timbul daripada penghakiman-penghakiman yang diberikan di dalam dua guaman sivil iaitu Guaman Sivil 351/79 dan 352/79 yang dibicarakan bersama di mahkamah bawahan. Responden-responden telah memfailkan tiga permohonan, iaitu:

(i) permohonan untuk kebenaran untuk memfailkan notis rayuan terhadap keputusan Mahkamah Tinggi tidak membenarkan permohonan responden untuk kebenaran bagi meminda semula pernyataan tuntutan di dalam CS 352/79 untuk menambahkan kausa tindakan yang baru terhadap perayu pertama ('DSK') dan untuk menyertakan Zara Sdn Bhd ('Zara') sebagai defendan ketiga. Responden-responden menegaskan bahawa meskipun pihak-pihak menggunakan format seperti yang terkandung dalam permohonan tersebut dan prosiding-prosiding yang berikutan, permohonan tersebut adalah diniatkan untuk dihujahkan di mahkamah terbuka dan membentuk sebahagian prosiding-prosiding di dalam perbicaraan kerana permohonan dibuat semasa dalam perlangsungan perbicaraan. Oleh itu permohonan tersebut bukanlah berbentuk interlokutori. Dihujahkan bahawa tiada perlanjutan masa atau kebenaran untuk merayu adalah diperlukan; (ii) permohonan untuk meminda dua notis rayuan bersilang responden terhadap perintah sama yang enggan memberikan pindaan tersebut bertarikh 7 April 1999, melalui hujahan kausa tindakan yang baru terhadap DSK dan percantuman tindakan terhadap Zara di dalam CS 352/79 yang sama. Responden berhujah bahawa berikutan keterangan saksi ('SSA'), adalah perlu untuk membuat cadangan pindaan-pindaan untuk memenuhi keperluan keadilan; dan (iii) permohonan untuk meminda dua notis rayuan bersilang responden berkenaan dengan penghakiman bertarikh 6 September 1999 berkenaan dengan CS 351/79 untuk meningkatkan jumlah penghakiman dengan award-award jumlah lanjutan yang lain di mana mereka menuntut mereka adalah berhak berdasarkan keterangan yang dikemukakan.

Diputuskan, menolak permohonan-permohonan tersebut:

(1) Dengan mengambil kira semua perkara, permohonan untuk meminda merupakan suuatu perkara interlokutori dan tidak membentuk sebahagian daripada perbicaraan dan telah ditandatangani dengan betul oleh hakim yang membicara di dalam kamarnya. Jika adalah benar bahawa pindaan-pindaan yang dipohon adalah bertujuan untuk membentuk sebahagian prosiding-prosiding di dalam perbicaraan, tiada keperluan untuk memfailkan sebarang saman dalam kamar kerana permohonan tersebut dengan mudah boleh dipohon secara lisan di mahkamah terbuka pada waktu pagi 8 April 1999, apabila mahkamah bersambung semula selepas rehat selama sebulan (lihat ms 334A–C).

(2) Oleh kerana permohonan responden adalah suatu perkara interlokutori, responden mempunyai, di bawah k 12(a) Kaedah-Kaedah Mahkamah Rayuan 1994, sebulan dari 7 April 1999, di dalam tempoh di mana untuk merayu. Namun, notis usul tersebut hanya difailkan lapan bulan kemudian. Afidavit sokongan notis usul tersebut tidak mengandungi sebarang penjelasan untuk kelewatan tersebut. Mahkamah mendapati ini

bukanlah kes yang wajar di mana mahkamah patut menjalankan budi bicara untuk melanjutkan masa (lihat ms 334E, G–H).

(3) Sesungguhnya penegasan responden-responden bahawa kepentingan keadilan akan dipenuhi dengan membenarkan pindaan-pindaan yang dicadangkan agar semua isu ditentukan dan dibicarakan, mahkamah menganggap bahawa masa untuk tujuan yang murni tersebut sepatutnya dilakukan dengan lebih awal lagi dan bukan di peringkat yang lewat apabila hujahan-hujahan penutup akan dibuat. Jika pindaan-pindaan tersebut dibenarkan, ia bermaksud bahawa tidak terdapat kata putus di dalam prosiding-prosiding terutamanya apabila pindaan-pindaan yang diminta memohon untuk memasukkan kausa tindakan yang baru dan menambahkan satu pihak yang baru di dalam prosiding-prosiding. Pindaan-pindaan sedemikian akan termasuk pembukaan semula perbicaraan tersebut kerana pihak-pihak perlu kembali kepada Mahkamah Tinggi untuk kausa tindakan yang baru dibicarakan dan pihak yang baru didengar di atas pembelaannya (lihat ms 336C–G).

(4) Berkenaan dengan permohonan untuk meminda notis-notis rayuan bersilang untuk meningkatkan jumlah penghakiman, mahkamah mendapati bahawa cara di mana cadangan pindaan-pindaan dikemukakan adalah tidak mencukupi bagi pemahaman jelas mahkamah akan niat tersebut. Selanjutnya, keterangan dan bukannya fakta-fakta telah diplidkan. Aturan 18 k 7 Kaedah-kaedah tersebut memerlukan setiap pliding untuk mengandungi hanya pernyataan di dalam bentuk ringkas berkenaan dengan fakta-fakta material di mana pliding pihak tersebut bergantung untuk tuntutannya atau pembelaan tetapi bukanlah keterangan di mana fakta-fakta tersebut dibuktikan. Cadangan pindaan-pindaan yang dibuat bukan hanya mengandungi keterangan tetapi hujahan-hujahan dan inferens. Ia adalah sangat tidak wajar oleh kerana ia bercanggah dengan peraturan-peraturan pliding (lihat ms 337H, 338B–D).]

Notes

For cases on amendment generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 294–345.

Cases referred to

Credit Co (M) Bhd v Fong Tak Sin [1991] 1 MLJ 409 (refd)

Laird v Briggs (1881) 16 Ch D 663 (refd)

Soh Keng Hian v American International Assurance Co Ltd [1996] 1 MLJ 191 (refd)

Thong Kim Chea v Thong Sxeng & Co Sdn Bhd & Anor [1995] 3 MLJ 481 (refd)

Legislation referred to

Rules of the Court of Appeal 1994 r 12(a)
Rules of the High Court 1980 O 15 r 6(2)(b)(i), O 20 r 5
Sabah Limitation Ordinance 1952 s 3, item 97 of the Schedule

Appeal from: Civil Cases No 352 of 1979 and No 351 of 1979 (High Court, Kota Kinabalu)

Martin Mann QC (*Alexander Decena* and *Norbett Yapp* with him) (*Jayasuria Kah & Co*) for the respondents.

John Cherryman (*Douglas Lind* and *Desmond Liaw* with him) (*Skinner Lind Willie Wong & Chin*) for the appellant.

Siti Norma Yaakob JCA (delivering judgment of the court): Proceedings in the four consolidated appeals before us stem from the judgments delivered in two civil suits that were tried jointly in the court below. The two civil suits are Civil Suits 351/79 and 352/79 and two separate judgments from each suit dated 6 September 1999, and 10 September 1999, were entered against the appellants against which four separate notices of appeal were filed by them, two from Civil Suit 351/79 and two from Civil Suit 352/79. The respondents also filed two identical notices of cross-appeal against the judgment dated 6 September 1999, and two other identical notices of cross-appeal in respect of an order dated 7 April 1999, concerning the dismissal of their application to amend their pleadings in Civil Suit 352/79 to join Zara Sdn Bhd ('Zara') as the third defendant in that suit.

The parties have also filed between them seven separate notices of motion and at the outset of the trial we dealt with these applications first before hearing submissions on the merits of the appeals and cross-appeals.

Two of such applications dated 2 February 2000, and 7 February 2000, were filed by the appellants and they seek to include a missing document at Part C, Vol 7 as p 1965A, in the records of appeal as well as the certified true copies of the orders appealed against dated 6 September 1999 and 10 September 1999. Since the respondents had no objection to both applications we had allowed them on terms of the respective application.

There were also two identical applications both dated 25 April 2000, filed by the respondents to adduce fresh evidence by the admission of three affidavits affirmed by the appellants' witness, one Syed Salem Albukhary (SSA). Before us, Mr Martin Mann QC leading counsel for the respondents submitted that both applications have since become unnecessary and under those circumstances we had dismissed them with costs.

That left us with three more applications, all filed by the respondents and which prove to be very contentious. The first of such remaining applications dated 15 December 1999, is for leave to file a notice of appeal against the decision of the High Court dated 7 April 1999, disallowing the respondents' application for leave to amend their re-amended statement of claim dated 21 October 1998, in CS 352/79 to:

(1) add a new cause of action against the first appellant, Datuk Syed Kechik (DSK); and

(2) join Zara as a third defendant.

The first objection taken was on the form and nature of the application to amend in the court below as on this hinges the time factor when a dissatisfied party can appeal. The respondents maintain that despite the format used for the application and the proceedings that ensued, the application was intended to be argued in open court and form part of the proceedings in the trial as the application was made in the course of the trial. As such the application was not interlocutory in nature, it formed part and parcel of the trial and the time to appeal was after judgment had been delivered on 6 September 1999, and not after it was dismissed on 7 April 1999. Under those circumstances the respondents contend that no extension of time or leave to appeal is necessary based on the authority of *Laird v Briggs* (1881) 16 Ch D 663.

It is common ground that the application dated 5 April 1999, was filed during a break in the trial as between the period of 5 March 1999, to 8 April 1999, there was no sitting as the learned trial judge had to attend to the hearing of other matters of which he had been committed to and it also enabled leading counsel to attend to prior engagements outside Malaysia. The break too appeared to have suited both sides as it gave them the opportunity to prepare their closing submissions.

On 7 April 1999, a day before the resumption of the trial, the learned trial judge heard the application to amend. We pause here to look at the format of the application as filed in the court below.

The original application to amend was in the form of a summons in chambers under O 20 r 5 of the Rules of the High Court 1980 ('the Rules'). At the hearing corrections were made to the summons by Mr Alexander Decena, counsel for the respondents to indicate that the application was made under O 15 r 6(2)(b)(i) of the Rules as well. Upon being told that the summons was not in order, Mr Alexander Decena also applied orally to amend the application by specifying the gist of the amendments sought for in the summons but despite these corrections and amendments, the summons was still very much a summons in chambers. If indeed there was any doubt as to the nature of the application as amended this was put to rest by the opening words '*LET ALL PARTIES concerned attend before the judge in chambers* ...' (Emphasis added). Clearly the hearing was to be a chamber hearing and if indeed an open court hearing was intended but the wrong form was issued, the respondents could have applied orally to have the matter argued in open court. But a perusal of the notes of proceedings recorded by the learned trial judge shows this was not so. Instead on the morning of 7 April 1999, Mr Douglas Lind, junior counsel for the appellants applied for the matter to be adjourned to enable leading counsel, who was to arrive from the United Kingdom that evening, to argue it the next day. This was refused by the learned trial judge on the ground that junior counsel on both sides who have had the conduct of the proceedings, were equally capable of arguing the matter. It was under those

circumstances that the learned trial judge heard the application in chambers and dismissed it with costs the same day. The order has also been drawn up and perfected on 15 April 1999, an exercise in which the respondents' solicitors had participated in with no untoward show of any objection.

Taking all matters into consideration it is our considered opinion that the application to amend was very much an interlocutory matter and did not form part of the trial and was correctly dealt with by the learned trial judge in his chambers. If indeed the amendments sought were intended to form part of the proceedings in the trial, there was no necessity to file any summons in chambers as the application could easily have been applied for orally in open court on the morning of 8 April 1999, when the court reconvened after the one month's recess. That was the manner in which amendments were sought for in *Laird v Briggs* when at the trial, counsel for the defendant applied orally at the Bar for leave to amend the statement of defence. It was refused and it was held that under those circumstances the refusal formed part of the judgment and it was not necessary to appeal separately from it.

It is true that on the morning of 8 April 1999, Mr Martin Mann QC, leading counsel for the respondents did apply orally to the learned trial judge to have the application reheard again but this was refused and we say that such refusal does not alter the status of the application as it originated from a summons in chambers, a situation that was not present in *Laird v Briggs*.

Having held that their application is very much an interlocutory matter, the respondents had, under r 12(a) of the Rules of the Court of Appeal 1994 ('CA Rules'), one month from 7 April 1999, within which to appeal. This was not done until the instant notice of motion dated 15 December 1999, was filed, eight months later. The power to extend time or give leave is very much a discretionary matter and to enable us to exercise our discretion, it is necessary that the respondents place before us some relevant evidential material to explain the delay in filing the notice of appeal. See the decisions of this court in *Soh Keng Hian v American International Assurance Co Ltd* [1996] 1 MLJ 191, and *Thong Kim Chea v Thong Seng & Co Sdn Bhd & Anor* [1995] 3 MLJ 481.

The affidavit in support of the notice of motion does not contain any explanation for the delay and this is not surprising as the respondents had taken the stand that no separate notice of appeal is necessary as the dismissal of their application to amend was made at the trial and formed part of the judgment. As we cannot accept that contention and there has been an omission to give any satisfactory reason for the delay, we consider that this is not a proper case in which we should exercise our discretion to extend time. Under the circumstances we dismissed the notice of motion to amend the pleadings of Civil Suit 352/79, with costs for two counsel.

With the dismissal of the notice of motion for leave to amend, that would have resulted in the substantial amendments sought for by the respondents, being dismissed as well. But this is not to be as by an ingenuous way, the amendments have resurfaced in a separate notice of

motion also dated 15 December 1999, that seek to amend the respondents' two notices of cross-appeal against the same order refusing amendment dated 7 April 1999, by a plea of a new cause of action against DSK and the joinder of action against Zara in the same Civil Suit 352/79.

It is the respondents' contention that following the evidence of SSA, (who testified on behalf of DSK, who is too ill to testify) it has become necessary to make the proposed amendments so as to meet the ends of justice so that all issues are identified and properly argued before the court.

In the case of DSK, it is proposed to add a new cause of action against him by identifying a new fiduciary duty that was not pleaded before in the re-amended statement of claim dated 21 October, 1998. The amendments appear in the proposed para 8C in the re-amended statement of claim which sets out the added fiduciary duty owed by DSK to the first and second respondents and the breaches thereof at the proposed paras 9A and 10A.

As for joining Zara as the third defendant, this is in line with SSA's admissions made during his testimony that:

(1) he orally misrepresented the actual management reserve area to be taken away from the twelve concessionaires by inflating the extent of such area as being more than adequate to fund the first respondent's project of building stadia and sport complexes in all major towns in Sabah and by so doing justify Tun Mustapha's ('TM') action in 'gifting away' an insignificant area of 40 sq miles to the second appellant. This in brief is the gist of the amendments in the proposed paras 14A, 14AB, 14AC and 14B of the re-amended statement of claim.

(2) Zara had received monetary benefits from the second appellant and under the circumstances Zara is a constructive trustee liable to account to the respondents. This is pleaded in the proposed paras 15A and 15AB. Such benefits include receipt of a sum of RM774,717.26 from the second appellant to fund Zara in the construction of the coastal highway, one of the matters raised in CS 351/79. There are also the admissions that other monetary benefits were made by the appellants to various persons and companies all connected to DSK and particularised in the proposed paras 15AC (i), (ii), (iv)–(viii), of the re-amended statement of claim.

Finally consequent upon the aforesaid amendments, the respondents contend that the judgments dated 6 September 1999, and 10 September 1999, in Civil Suit 352/79 be varied by:

(1) substituting for the judgment sums therein a sum of not less than RM28,176,219 to be paid by the appellants to them with compound interest thereon at 8% pa to run from 1 January 1978, to date payment.

(2) ordering Zara on the evidence adduced to account to them:

(a) the sum of RM774,712.26 and such further sum not exceeding RM5,601,453.30; and

(b) compound interest on the two sums from 11 August 1976 until date of payment. A

(3) alternatively ordering Zara to secure the payment of such sums, including interest from out of Zara's assets.

Objections to such amendments can be summarized into the following three headings: B

(1) The nature of the amendments.

(2) The timing of the amendments.

(3) The effect of such amendments.

If indeed it is the contention of the respondents that the interests of justice would be met by allowing the proposed amendments so that all issues are identified and tried we consider that the timing of such a noble purpose should have been done much earlier and not at this very late stage when closing submissions were about to be made. As at 7 April 1999, when the amendments were refused that was the status of the trial in the court below. The respondents have explained that they were not able to compile comprehensive notices of cross-appeal any earlier as they had under r 8(1) of the CA Rules ten days after service of the memorandum of appeal on them by the appellants within which to settle their notices of cross-appeal. Despite this they had taken the precaution of settling such notices in advance after they were served with the appellants' notices of appeal but their original notices of cross-appeal were not as comprehensive as they wanted them to be. C D E

We cannot accept that explanation to be a reasonable and satisfactory one as being the reason for the delay as the proposed amendments as far as we can see are not dependant on the memorandum of appeal. We fully appreciate that the four consolidated appeals contain many complex issues and involved voluminous documents but this fact alone is no excuse for the failure of the respondents to settle their notices of cross-appeal within the time limited by the CA Rules. This is so as the need to amend only arose after SSA had testified on behalf of the appellants and if we allow such amendments under those circumstances it would mean that there will be no finality in the proceedings particularly when the amendments asked for by the respondents seek to introduce a new cause of action against DSK and to add a new party into the proceedings. Such amendments, we say, would involve reopening the trial again as the parties have to go back to the High Court for the new cause of action to be tried and the new party to be heard on its defence. This is not a very healthy and a happy prospect to look forward to as more time and money will have to be expended in an already dragging twenty year old matter. Added to this is the claim by the respondents that Zara hold all the monetary benefits given to them by the appellants as a constructive trustee and liable to account, a cause of action that is already time barred under s 3 of the Sabah Limitation Ordinance 1952, which under item 97 of the Schedule to the Act prescribes a six year limitation period from the date the right to sue accrued. On the matter of limitation, Hashim Yeop Sani Chief Justice (Malaya) had this to F G H I

say in the case of *Credit Co (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 at pp 413–414:

> The limitation law is promulgated for the primary object of discouraging plaintiff's from sleeping on their actions and more importantly, to have a definite end to litigation. This is in accordance with the maxim interest reipublicae ut sit finis litium that in the interest of the state there must be an end to litigation. The rationale of the limitation law should be appreciated and enforced by the courts.

The respondents are not without any remedy as armed with the favourable evidence adduced at the joint trial they can still proceed against DSK and Zara in fresh proceedings independently of the two civil suits filed in 1979.

For the aforesaid reasons and for the added reason that we had already refused leave to amend CS 352/79, we had also dismissed the respondents' notice of motion to amend the two notices of cross-appeal with costs for two counsel.

Finally we come to the respondents' last notice of motion also dated 15 December 1999, which is also for leave to amend their two notices of cross-appeal relating to the judgment dated 6 September 1999, in respect of CS 351/79. In the original notices of cross-appeal, the respondents object to the failure of the learned trial judge:

(1) to order the second appellant to account to them the sum of RM10,375,504 on the additional ground of accessory liability;

(2) to award damages to the second and third respondents on the ground that DSK had an unlawful collateral purpose which led him to breach his fiduciary duties by committing the respondents to certain capital expenditure this being the construction of the Tower Block and the coastal highway for which the respondents suffered loss and damages.

Resulting from the aforesaid, the respondents contend that the judgment dated 6 September 1999, be varied to include the following orders as well.

(1) The second appellant account to them the sum of RM10,375,004 as an accessory; and

(2) RM16.8m and RM4.9m be awarded to them as damages with interest thereon.

Clearly by their original notices of cross-appeal, the respondents seek to increase the judgment sum of RM10,375,004 by the further awards of other sums of money, which they claim they are entitled to base on the evidence as adduced.

In the proposed amended notices of cross-appeal, the respondents seek to further increase the judgment sum and the other sums stated in their original notices of cross-appeal by a further award for:

(1) the sum of RM13.27m as equitable damages or compensation being the loss suffered by them measured in terms of the likely deficit in the value of the Tower Block; and

(2) varying the judgment sum and substituting it for the sum of RM12,105,764 or such lesser sum being not, less than RM8,277,227 based on the evidence adduced in the court below.

A draft of the proposed amended notices of cross-appeal has been attached by the respondents to their application and we must admit that our first reaction to the draft was one of utter disbelief and confusion. The grounds on which the respondents rely to support their application are pleaded in lengthy and complicated paras and in particular ground A(1) is expressed in one long complicated sentence that make up 35 lines of typewritten words. If the intention of such amendments is to identify the issues to be argued before us, we can safely say that the manner in which the proposed amendments are presented to us fell short of our clear understanding of that intention. The proposed amendments could easily have been drafted in short and simple sentences that can readily be understood.

Another glaring instance that made the pleadings out of the ordinary is that evidence and not facts have been pleaded. It is a cardinal rule in civil proceedings that only facts need be pleaded. For this we rely on O 18 r 7 of the Rules that requires every pleading to contain only a statement in a summary form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which those facts are to be proved. The proposed amendments as drafted not only contain evidence but also submissions and inferences and this we say are highly improper as they offend the rules of pleading. On this ground alone, we could not allow such amendments and we accordingly dismissed the respondents' second notice of motion for leave to amend the two notices of cross-appeal with costs for two counsels.

Applications dismissed.

Reported by Jafisah Jaafar